



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

PROGRAMME GUIDELINES

The South African Film and Television Production and Co-Production Incentive

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Disclaimer:

This guidelines document provides the criteria to assess proposals from potential film and television projects and the process of applying for the incentive. The guidelines are approved and issued by the Minister of Trade and Industry for the purpose of ensuring clarity on the aim and requirements of the incentives programme. **the dti** reserves the right to amend the guidelines as it deems appropriate.

1. OVERVIEW

- 2.1 The South African Government recognises the potential of the film industry and has prioritised it as one of the sectors under its Industrial Policy Action Plan (IPAP). The growth of the industry has a tremendous impact on economic development in terms of employment and exports, while stimulating a host of supplier industries.
- 2.2 The South African Government takes cognisance of the significant contribution that the film and television industry potentially has in stimulating the country's economic growth, job creation and its role in facilitating dialogue for national building. This is attested in the past by production such as the award-winning *A Million Colours* and the internationally acclaimed Nelson Mandela *Long Walk to Freedom*.
- 2.3 To support the growth of the sector, the Department of Trade and Industry (**the dti**) is offering incentives to increase local content generation and improve location competitiveness for foreign film productions. In addition to incentives, **the dti** is working with other role players on raising the profile of the sector in general and a number of strategic co-production treaties are set to improve distribution locally and internationally.
- 2.4 I hereby extend an invitation to industry players to make use of this facility and to support the South African Government in realising its goals of growth, employment and equity.

Dr Rob Davies, MP
Minister of Trade and Industry

2. PREAMBLE

- 2.1 The purpose of this document is to provide guidelines for the South African Film and Television Production and Co-production Incentive.
- 2.2 The guidelines are intended to enable enterprises to present their applications to **the dti** and provide a framework for **the dti** to evaluate such applications. Approval will only be considered for those projects that meet the strategic objectives of South African Film and Television Production and Co-production Incentive as interpreted by these guidelines and remains in the sole discretion of **the dti**. To qualify for the incentive, applicants have to receive approval from **the dti** and any such decision will be final.
- 2.3 The guidelines for the South African Film and Television Production and Co-production Incentive may be amended as deemed necessary by **the dti**. These amendments will be published on **the dti** website and will be of immediate effect upon publication.
- 2.4 Where the guidelines lend themselves to varying interpretations or do not deal with specific subject matter, the interpretation of **the dti** must be requested and such interpretation will be decisive and final. A new version of the guidelines may, from time to time, be published on **the dti** website.
- 2.5 Approval of applications will be subject to compliance with the incentive guidelines, the relevant provisions of the Public Finance Management Act (PFMA) and, more specifically, the availability of funds.

3. DESCRIPTION OF THE SOUTH AFRICAN FILM AND TELEVISION PRODUCTION INCENTIVE

- 3.1 The South African Government offers a package of incentives to promote its film and television production industry. The package consists of the South African Film and Television Production Incentive, which aims to assist local film producers in the production of local content; the South African Emerging Black Filmmakers Incentive, which aims to nurture and grow emerging black filmmakers to take up big productions; and the Foreign Film and Television Production Incentive to attract foreign-based film productions.
- 3.2 The South African Film and Television Production Incentive is available to qualifying South African productions and official treaty co-productions with total production budgets of R2.5 million and above¹.
- 3.3 The objective of the South African Film and Television Production Incentive is to support the local film industry and contribute towards employment opportunities in South Africa.
- 3.4 The South African Film and Television Production Incentive provide financial assistance to local productions in the form of a rebate of up to 35% of the Qualifying South African Production Expenditure (QSAPE). No cap will apply for this rebate.
- 3.5 The incentive is effective from 1 September 2014 (subject to paragraph 3.1) and will be administered for a period of three years up to 2017.

¹ There is a separate Programme Guideline document for the Foreign Film and TV Production Rebate, targeted at attracting larger-budget international productions as well as Emerging Black Filmmakers for productions with a total budget below R2.5 million

4. ELIGIBILITY CRITERIA

4.1 Commencement

- Principal photography should not commence until an approval letter has been received from **the dti**.
- Applications submitted without relevant supporting documents will not be considered.

4.2 Registered legal entity/special purpose vehicle

- An applicant must be a Special Purpose Corporate Vehicle (SPCV) incorporated in the Republic of South Africa solely for the purpose of the production of the film or television project. The SPCV and parent company(ies) must have a majority of South African shareholders, of whom at least one must play an active role in the production and be credited in that role.
- An applicant must be the entity responsible for all activities involved in the making of the production in South Africa and must have access to full financial information for the entire production.
- Only one film production, television drama or documentary series per entity is eligible for the incentive.
- The applicant must comply fully with its obligations in terms of The Legal Deposit Act, 1997 (Act No. 54 of 1997).

4.3 Compliance with Broad-Based Black Economic Empowerment (B-BBEE)

- Both the applicant SPCV and holding company(ies) must comply with the requirements for B-BBEE as issued in the *Government Gazette* of 11 October 2013 in terms of the Codes of Good Practice.
- Both the applicant SPCV and holding company (ies) must achieve at least level four B-BBEE status in terms of the B-BBEE Codes of Good Practice.
- At application stage, both the applicant SPCV and holding company(ies) must submit a valid B-BBEE certificate issued by an accredited verification agency.

4.4 Shooting schedule requirements

- At least 50% of the principal photography schedule must be filmed in South Africa; and
- A minimum of two weeks of the principal photography must be filmed in South Africa.

5. ELIGIBLE FORMATS

The following formats are eligible: feature films; tele-movies; television drama series; documentaries; animation; digital content; and video gaming. Each one is explained in turn hereunder.

5.1 Feature film

- Film, including animation, commonly screened as the main attraction in commercial cinemas;
- No less than 80 minutes or, in the case of a large format (IMAX) film, no less than 45 minutes; and
- Shot and processed to commercial theatrical release standards for cinema exhibition or television broadcast, direct-to-video or DVD.

5.2 **Tele-movies**

- Drama programme of a similar nature to a feature film capable of exhibition on television;
- No less than one commercial television hour in length;
 - or in the case of “C” classification material and material specifically designed for children under six years of age, not less than one half commercial television hour in length;
 - or in the case of a programme predominantly using cell, stop motion and/or computer animation, not less than one half commercial television hour; and
- Shot and processed to commercial release standards or for television broadcast.

5.3 **Television drama series and mini-series**

An episodic television drama, including animation, which is:

- Either an extended but self-contained drama made for television wherein the key dramatic elements of character, theme and plot are introduced, developed and concluded to form a narrative structure (similar to that of a novel), which features a major continuous plot improved by minor plots and contains the expectation of an ending that resolves the major plot tensions arranged consecutively for screening purposes limited to 13 hours or 13 episodes or less;
- Or an anthology of drama works for television where the key dramatic elements of character, theme and plot are introduced, developed and concluded to form a narrative structure within each episode (similar to that of a novel or a short story), but without continuity of plot between episodes (although there may be host elements common to each episode) and made to be broadcast under one generic title;
- Shot and processed to commercial release standards for telecast; and
- Each episode must have a minimum duration of a television half-hour.

5.4 **Documentary, documentary series and documentary feature**

- A non-fictional informative or educational programme or series recording real people or events that may involve some dramatisation;
- No less than 60 minutes in length or, in the case of a large format (IMAX) film, no less than 45 minutes;
- Shot and processed to commercial theatrical release standards for cinema exhibition, television broadcast, direct-to-video or DVD; and
- Series limited to 13 episodes.

5.5 Animation

- Animation is a sequence of frames that, when played in order at sufficient speed, presents a smoothly moving image for broadcast, projection, new media and network use in an entertaining, educational, informative or instructive manner.
- An animation can be hand-drawn images (2d animation), digitised video, computer-generated images (3D and flash animation), live action objects or a combination thereof.

5.6 Digital Content and Video Gaming

- Video game development is the process of creating a video game or, in other words, creating an interactive digital audio-visual experience during which an individual person or group of people can play or interact with the game through some kind of user interface. This process involves primarily the combination of digital art with programming.
- The resulting product of video game development is a computer program or collection of data containing all the elements necessary for the game to function as intended, including all computer programming and digital artwork. Video game development is mostly done for the commercial purposes of entertainment, but a video game can be developed for any purpose whatsoever, based on the intended goal of its progenitor.

6. QUALIFYING PRODUCTIONS

- 6.1 The total production budget (total production expenditure) must be a minimum of R 2.5 million or R500 000 for documentaries. For example, a project with the Total Production Expenditure (TPE) of R2.5 million will have a Qualifying South African Production Expenditure (QSAPE) of R1.875 million, which is at least 75% of TPE (see paragraph 8.1). It is, however, possible for a project with a TPE of R2.5 million to have a QSAPE of R2.5 million.
- 6.2 The applicant must provide **the dti** with a distribution plan and evidence of a distribution agreement.
- 6.3 The applicant must provide **the dti** with a financial plan and a letter or letters of intent from financier(s).
- 6.4 The applicant must have at least 25% of the total budget for the production fully committed at application stage.

7. EXCLUSIONS

7.1 The following formats are not eligible

- Reality TV
- Discussion programme
- Current affairs
- News
- Advertising programme or commercial
- Panel programme
- Variety programme or a programme of a like nature
- Public events, including sports events
- Soapies
- Speculative projects
- A training or “how to” programme
- Mobile phone video gaming
- Other

7.2 Films that fall within schedules 6, 7 or 10 of the South African Films and Publications Act 1996, as amended, are specifically not eligible for the rebate.

7.3 Commissioned projects by any broadcaster will not be eligible for this incentive.

7.4 Bundling is not allowed.

7.5 The SPCV should not be owned and controlled by South African and foreign broadcasters.

8. ELIGIBLE PRODUCTIONS

Productions eligible for the South African Film and Television Production Incentive can either be a Qualifying South African Production or an Official Treaty Co-Production.

8.1 A Qualifying South African Production means a film in respect of which:

- At least 75% of the total budget of the film is defined as QSAPE;
- The majority of intellectual property is owned by South African citizens;
- The director is a South African citizen, unless the production requires the inclusion of an individual not covered by this clause, in which case approval may be given at the provisional approval stage;
- The top writer and producer credits include South African citizens, unless the production requires the inclusion of an individual not covered by this clause, in which case approval may be given at provisional approval stage (either exclusive or shared collaboration

credits);

- The majority of the five highest-paid performers are South African citizens, unless the production requires the inclusion of an individual who is not a South African citizen, in which case approval may be given at provisional certification stage; and
- The majority of the film's heads of departments and key personnel are South African citizens.

8.2 **A Qualifying Co-Production must meet the following conditions:**

- A production must be approved by the Minister of Arts and Culture as an Official Treaty Co-Production; and
- The applicant must submit a copy of the advance ruling at application stage for provisional certification and a copy of the final ruling when submitting the application for the final payment of the incentive.

9. CREDIT

- **the dti** must be credited for its contribution to the production.
- Productions are encouraged to include **the dti** logo in the opening credits for all production.

10. ELIGIBLE EXPENDITURE

All costs, including Total Production Expenditure (TPE), QSAPE and Non-QSAPE, must be presented with each application for purposes of clarity.

10.1 **Total Production Expenditure (TPE)**

A film or television production's total production expenditure is that incurred or reasonably attributable to the making of the film from pre-production to the point at which the first copy of the film is ready to be distributed, broadcast or exhibited to the general public.

10.2 **Qualifying Production Expenditure**

- Qualifying Production Expenditure will include all the production costs incurred by the applicant on intellectual property and goods owned or facilities and services provided by South African companies.
- Where individuals or contractors are paid via an agency, proof of the South African citizenship status of the individual and contractor will be required.
- Where the purchase of South African copyright is claimed as QSAPE, the relevant legal agreement verifying chain of title must be attached to the application form and monitoring reports.
- All expenditure in South Africa for international services that remain in South Africa will qualify as QSAPE.

- Only production costs discharged through the bank account of the SPCV will qualify as QSAPE.
- Sector Education and Training Authority (SETA).
- Loan funding from any national, provincial and local government and its entities.

10.3 **Non-Qualifying Expenditure**

- Financing expenditure
- General business overheads
- Other associated party fees
- Deferments, profit participation and residuals
- Advances
- Land and building
- Costs of services embodied in goods
- Depreciation
- Executive producer
- SPCV incorporation costs
- Publicity and marketing costs
- Consultant fees charged to prepare the application
- Grant funding from any other funding received from national, provincial and local government
- Other

11. **TREATMENT OF EXPENDITURE**

11.1 **Value Added Tax (VAT)**

All amounts set out in this document and those provided in applications must be net of VAT where it is reimbursable.

11.2 **Currency exchange**

All QSAPE will be incurred in South African Rand. All other production expenditure incurred in foreign currencies must be reported in South African Rand using the budgeted exchange rate on the audited expenditure statement.

11.3 **Arm's length expenditure**

The arm's length principle is to ensure that amounts charged between the applicant company and any connected parties for the provision of goods or services are commercially reasonable.

Where the applicant incurs expenditure under a non-arm's length arrangement, which inflates or deflates the cost of particular goods or services in relation to the film production, a rate no

greater than the commercial rate for those goods or services, will be counted towards QSAPE and TPE.

The commercial rate will be taken to be the amount that would have been incurred if the parties were dealing at arm's length, charging what they would ordinarily to an unrelated party. If a lesser rate is charged, that rate must be claimed.

The arm's length principle applies to any act or transaction that is directly or indirectly connected to any expenditure incurred by the applicant – that is, the principle still applies if a non-arm's length deal between other parties otherwise inflates the expenditure of particular goods or services purchased by the applicant.

11.4 **Basis of expenditure**

To be included as QSAPE, an expenditure item must have actually been incurred on the making of the specific film production for which the application is made. In addition, the applicant must have actually discharged its liability to pay at the time of application for the incentive.

11.5 **Expenditure by prior companies**

Eligibility for the incentive extends to an applicant who takes over the film production from another company(ies) and completes the film production. The applicant is taken to have incurred the production expenditure of the previous company(ies) for the purposes of the incentive.

Any costs incurred by the applicant in the takeover of the project are excluded from its calculation of QSAPE.

Documentary evidence of this expenditure to verify that it qualifies as QSAPE must be provided.

11.6 **Purchase and sale of goods**

Where an applicant buys any goods for use in a film production and sells or disposes of those goods on completion of the production, only the net cost of those items can be claimed as TPE or QSAPE.

In the event of the applicant or an associated party retaining any goods bought beyond the completion of the film, an independent valuation must be made of those goods and that valuation must be deducted from the value of QSAPE for the purpose of calculating the incentive.

11.7 **Transfer pricing**

It is anticipated that the applicant company will charge a production services fee if the film is being produced for an overseas producer or studio. This fee must be at an arm's length commercial rate and will be considered QSAPE if it satisfies the criteria.

If this fee is paid out of the incentive, it will not have been incurred before the completion of the film and will not qualify as QSAPE.

12. REBATE CALCULATION

12.1 The rebate is calculated as 35% of first R6 million of the QSAPE, thereafter 25% is calculated; and

12.2 No cap will apply for this rebate.

13. APPLICATION PROCESS

13.1 Application for provisional approval – Form A

The following documents must be included in the application:

- Summary and detailed budget in South African Rand;
- Financial plan, including letters of intent from investors;
- Advanced ruling from the NFVF in the case of a co-production;
- Distribution agreement;
- Provisional shooting schedule;
- Certificate of incorporation of the SPCV (CK1);
- Appointment of directors of the SPCV (CM 29);
- Written confirmation that **the dti** will be credited in the front of the production; and
- Valid B-BBEE Certificate (Level 4) of SPCV and holding company.

13.2 Confirmation of commencement of principal photography - Form B

The following documents must be included in the confirmation:

- Day one of principal photography call sheet;
- Day one of principal photography progress report;
- Current photography schedule; and
- Post-production schedule.
- This form must be completed after the first day of principal photography.
- If principal photography does not commence within the prescribed three months, the application will be cancelled. After cancellation, the applicant may submit another application.

13.3 **Revised Completion Date – Form C** (To be completed only if the completion date differs from the one indicated on the original application.)

The following document must be included:

- Revised post-production schedule

13.4 **Claim Form (Application for Payment) – Form D**

The following documents must be included:

- Audited summary and detailed expenditure report;
- Auditor's statement;
- Complete general ledger in electronic format;
- Final ruling from the Department of Arts and Culture in the case of a co-production;
- Certificate of incorporation of the SPCV (CK1);
- Full final cast and crew list showing the following information:
 - Nationality/residency
 - ID or passport numbers
 - Total fee/salary paid to all South African nationals/residents
 - Contract duration
 - Role in the production
- Distribution agreement;
- A VHS or DVD of the final production;
- An original valid tax clearance certificate issued by SARS;
- Original credit order instruction form;
- Original cancelled cheque; and
- A DVD of the production to evidence its completion to a standard suitable for exhibition and verification of **the dti** credits.

14. **REBATE DISBURSEMENT**

- Rebate is disbursed on completion of the production or may be paid after reaching certain milestones.
- Applicants wishing to make use of the milestone payment method must acquire a completion bond. As this might be costly for smaller producers, where the cost of a completion bond could be as much as R300 000, the following will apply:
 - 70% of the cost of the completion bond will be subsidised for productions between R2.5 million and R6 million;
 - 50% of the cost of the completion bond will be subsidised for productions between R6 million and R10 million;
 - Productions over R10 million are required by financiers to have a completion bond in place and therefore no additional subsidy will be granted.

Disbursements according to milestones will be implemented as follows:

20% payment	Confirmation of completion bond
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20% payment	Start of principal photography
20% payment	Completion of principle photography
20% payment	Start of post-production "picture lock"
20% payment	Submission of form D "claim form"

- **the dti** will verify the completeness of the claim/expenditure before payment is made; and
- **the dti** will only accept completion bonds issued by the following companies:

1. **Hollard Group**

P.O. Box 676
Halfway House
1685
Tel: 011 807 0087

2. **Cine Finance (HK) LLC**

Wylie Court
23 Wylie Path
Kowloon
Hong Kong

3. **First Australian Completion Bond Company (Pty) Ltd**

Suite 6
255 Military Road
Cremorne NSW
2090

4. **International Film Guarantors LLC**

2828 Donald Douglas Loop
Santa Monica CA 90405
United States
Tel: +1 310 309 5660

19 Margaret Street
London W1W 8RR
United Kingdom
Tel: +44 20 7636 8855

5. **Film Finances SA**

P.O. Box 783
Fourways North
2086
Tel 0824114088

6. **ProSight International/Aon South Africa (Pty) Ltd**

London Underwriting Centre Level 7
3 Minster Court
Mincing Lane, London EC3R 7DD
+44 (0) 20 7337 7777

The Place
P.O. Box 1874
Parklands, 2121
+27 11 944 7290

15. INTERACTION OF THIS REBATE WITH OTHER SOURCES OF FUNDING

- Any other South African rebates, training or internship funding specific to this project may be claimed, but must be deducted from the gross QSAPE before calculation of the rebate. An exception is applicable for SETA funds, which may be received after the final application or payment of the rebate.
- A project that receives funding from any national, provincial and local government and its agencies is eligible to apply for this rebate.
- A project of private investors that is eligible for tax benefits under section 12(o) of the Income Tax Act, 1962 (Act No. 58 of 1962) is eligible for the rebate.
- An applicant must supply information on the intended and actual source of funding per the attachments required to Forms A and D in Schedule A.

16. CONTACT DETAILS FOR ENQUIRIES

For further information on film rebates, please contact:

Postal address:

Incentive Design and Administration Division
Private Bag X86
Pretoria 0001

Website: www.thedti.gov.za

Call Centre: 0861 843 384

Physical Address:

the dti Campus
77 Meintjies Street
Sunnyside

Pretoria 0002

Appendix A: Glossary of terms and definitions

Financing expenditure	Financing expenditure includes returns payable on amounts invested in the film production and expenditure connected with raising and servicing finance for the production, such as executive producer fees and interest payments.
General business overheads	South African business overheads, being general business overheads, are excluded from QSAPE to the extent that they exceed the lesser of: <ul style="list-style-type: none"> o 2% of the total of the company's TPE on the film production; or o R200 000.
Producer fees	South African producer fees, limited to two working producers and inclusive of all their travel accommodation and living expenses, are excluded from QSAPE to the extent that they exceed the lesser of: <ul style="list-style-type: none"> o 10% of the total of the company's TPE on the film production; or o R1 million in total.
Other connected party fees	<p>The fees of any other connected parties that appear above the line (that is, writer, director or cast member inclusive of all their travel, accommodation and living expenses) are excluded from QSAPE to the extent that they exceed the lesser of:</p> <ul style="list-style-type: none"> o 10% of the total of the company's TPE on the film production; or o R1 million in total. <p>Section 31 of the Income Tax Act, 1962, defines a connected party as:</p> <ul style="list-style-type: none"> (a) In relation to a natural person: <ul style="list-style-type: none"> (i) any relative; and (ii) any trust of which such natural person or such relative is a beneficiary. (b) In relation to a trust: <ul style="list-style-type: none"> (i) any beneficiary of such trust; and (ii) any connected person in relation to such beneficiary. (c) In relation to a member of any partnership: <ul style="list-style-type: none"> (i) any other member; and (ii) any connected person in relation to any member of such partnership. (d) In relation to a company: <ul style="list-style-type: none"> (i) its holding company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973); (ii) its subsidiary as so defined; (iii) Any other company where both such companies are subsidiaries (as so defined) of the same holding company; (iv) Any person, other than a company as defined in section 1 of the Companies Act 1973 (Act No. 61 of 1973), who individually or jointly with any connected person in relation to himself, holds, directly or indirectly, at least 20% of the company's equity share capital or voting rights; (v) Any other company if at least 20% of the equity share capital of such company is held by such other company, and no shareholders hold the majority voting rights of such company; (vi) Any other company if such other company is managed or controlled by <ul style="list-style-type: none"> (aa) any person who is a connected person in relation to such company; or (bb) any person who is a connected person in relation to a person contemplated in item (aa). (vii) Where such company is a closed corporation: <ul style="list-style-type: none"> i. any member;

	<ul style="list-style-type: none"> ii. any relative of such member or any trust that is a connected person in relation to such member; iii. any other close corporation or company that is a connected person in relation to: <ul style="list-style-type: none"> 1. any member contemplated in item (aa); 2. any relative or trust contemplated in item (bb).
Deferments, profit participation, residuals	<p>QSAPE does not include expenditure that is dependent on the film production's commercial performance and its earnings, as expenditure directly linked to the production's commercial performance cannot be quantified until after the production has been exhibited. Therefore, expenditure items specifically excluded from QSAPE include:</p> <ul style="list-style-type: none"> o Payments deferred until the film production provides financial returns through box office receipts, earnings or profits (for example, bonuses paid to directors); o Payments dependent on eventual profits made on the production; and o Amounts payable in relation to the residual rights of cast members concerning the commercial exploitation of the production through future exhibition and distribution.
Advances	All payments made by way of an advance on a payment in respect of deferments, profit participation or residuals are excluded from QSAPE unless they are non-recoverable.
Land and buildings	Any acquisition of land or buildings or the erection of buildings of a substantial nature is excluded from QSAPE as this expenditure would not be considered reasonably attributable to the making of the film. Sets and props will not be classified as substantial in nature, however, any proceeds on the sale of sets and props or the deemed value of such, if retained by the applicant or related party after completion of the film, must be deducted from the value of QSAPE for the purpose of calculating the rebate.
Costs of services embodied in goods	If the cost of certain services are embodied in the cost of goods delivered to the applicant company and those services were predominantly (namely, greater than 50% of the cost) performed outside South Africa, then those services are not provided in South Africa for the purposes of determining QSAPE. This does not apply to imported goods, where the supplier has an established business with a history of supplying those particular goods, for example, Kodak stock.
Other exclusions	<p>The following sundry items do not qualify as QSAPE:</p> <ul style="list-style-type: none"> o Errors and Omission Insurance, which protects the copyright holders from litigation once the film is exhibited; and o Any gifts, entertainment and gratuities.
Completion date	A film production is regarded as having been completed per the definition in section 24F of the Income Tax Act, 1962 (Act No. 58 of 1962) – in relation to a film, the date on which the cut master negative and conforming sound track of the film are married to an answer print or, where such film is not a cinematographic film, the date on which the film is completed to an equivalent production stage.
Audited expenditure statement	<p>All costs claimed as QSAPE must be presented in an audited expenditure statement. The audit must be prepared by a person who is:</p> <ul style="list-style-type: none"> o An auditor registered with SAICA or PAAB; o If the auditor has any connection to the applicant that connection should be declared; o the dti reserves the right to appoint any other registered auditor to perform further checks at the dti's own expense; o The statement should be in the format provided in Annexure A; o The auditor's statement is provided at the applicant's expense, with the name of the auditor and auditor's company or firm, qualifications and contact details to be provided in the relevant section of the application form; and o Both the auditor and the applicant are to sign "the Declaration by the Auditor" form.
Complete DVD	A complete DVD of the film production, together with a full final credit listing and proof of distribution or

including the dti credit	<p>exhibition arrangements for the production must be included in the application to verify that the production is ready for distribution or exhibition to the general public.</p> <p>the dti reserves the right to be supplied with a DVD of the entire film production or alternatively to be invited to a filming of the production in its entirety following the production's release. The final copy of the production will be kept only for the purposes of the application process.</p>
Speculative project	Work done with no defined goal for broadcast or distribution and is not commissioned.
Attested declaration	The information provided in an application must be certified in an attested declaration by an authorised person from the applicant company, normally a director of the applicant company or the chief executive officer.
Further information as requested	the dti reserves the right to require any further information deemed necessary to complete the rebate process. This information must be provided at the applicant's expense within 28 days of the dti's request, although the applicant may write to the dti requesting an extension of time.
Total production expenditure	<p>A film or television production's total production expenditure is that which is incurred or reasonably attributable to the making of the film from pre-production to the point at which the first copy of the film is ready to be distributed, broadcast or exhibited to the general public.</p> <p>Section 12(O) of the Income Tax Act No. 58 of 1962 (the Act) defines production expenditure as follows:</p> <ul style="list-style-type: none"> • "production cost", in relation to a film, means the total expenditure incurred by a film owner in respect of the acquisition or production of such film, excluding expenditure incurred in the erection, construction or acquisition of any buildings or other structures or works of a permanent nature, but including, without in any way limiting the scope of this definition: <ul style="list-style-type: none"> ○ any remuneration, salary, legal, accounting or other fee, commission or other amount paid or payable to any person for the purposes of or in connection with the production of the film; ○ the cost of acquiring the story rights, script, screenplay, copyright or other rights in relation to the film; ○ insurance premiums in respect of insurance against injury to or death of persons, or loss of or damage to property employed or used, as the case may be, in the production of the film; ○ premiums or commission payable in order to secure a guarantee that the cost of the film will not exceed a specified amount; ○ interest, finance charges and raising fees incurred for the purposes of or in connection with the production of the film; ○ the cost of acquiring or creating music, sound and other effects which will form part of the film; ○ any allowance that, but for the provisions of this section, would be allowed under section 11 (e) or (o) or 12(O) in respect of any machinery, implements, utensils or articles used in the production of a film: Provided that- any such allowance shall be deemed to be an amount of expenditure incurred; and ○ an amount equal to the total amount of any such allowance that may be granted in respect of any year of assessment divided by the number of days in that year.
Compliance with Broad-Based Black Economic Empowerment	Compliance with Broad-Based Black Economic Empowerment in terms of the Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and the Codes of Good Practice for Broad-Based Black Economic Empowerment, as issued in the <i>Government Gazette</i> of 9 February 2007.

Compliance to Broad-Based Black Economic Empowerment

Level	BEE Score	BEE Recognition Level
1	≥100	135 % (e.g. R1 = R1.35)
2	≥95 but <100	125%
3	≥90 but <95	110%
4	≥80 but <90	100% (e.g. R1 = R1)
5	≥75 but <80	80%
6	≥70 but <75	60%
7	≥55but <70	50%
8	≥40 but <55	10%
Not Compliant	<30	0% (e.g. R1 = R0)

Approved by:

Dr Rob Davies, MP
Minister of Trade and Industry

Appendix B: Schedule for incentive programme

1. DEFINITIONS

The definitions contained in the incentive guidelines apply. In addition:

- 1.1. "The Beneficiary" means the legal or natural person that was approved by **the dti** for incentives and, where the payment is ceded to a service provider, also refers to the service provider.
- 1.2. "Business Project" or "Project" means the business operated by the beneficiary and that was approved for the incentive.
- 1.3. "**the dti**" refers to the Department of Trade and Industry, care of the Incentive Development and Administration Division, Block A, 77 Meintjies Street, Sunnyside, Pretoria; Private Bag X84, Pretoria, 0001.

2. NATURE OF THE INCENTIVES

- 2.1. **the dti** and the **beneficiary** do not enter into a partnership, agency or shareholding agreement or other representation because of the approval of an incentive application or claim.
- 2.2. The beneficiary has no authority to bind or attempt to bind **the dti**, in any manner, or to assume or incur any obligation or responsibility, expressed or implied on behalf of or in the name of **the dti**.

3. INCENTIVE GUIDELINES AND ECONOMIC POLICIES OF the dti

The incentive guidelines and/or this schedule may be amended from time to time. Amendments to the guidelines and/or this schedule will be published on **the dti** website and be effective immediately. Beneficiaries whose applications have already been approved will only be affected by retrospective amendments if it is not prejudicial to them or **the dti**.

Where the beneficiary is of the opinion that a word or sentence in the guidelines or this schedule is vague and/or has to be interpreted, the beneficiary must not make its own interpretation. **the dti** has the right, in its sole discretion, to provide interpretations on the meaning and intention of such words or sentences. Such decisions are binding on all beneficiaries.

The beneficiary is required to familiarise itself with the economic policies of **the dti**. Any failure to conduct its business in line with such policies may result in the beneficiary being regarded as having contravened the terms of this schedule. Specifically, the beneficiary is reminded of **the dti**'s competition and consumer laws, BEE policy, as well as **the dti**'s efforts to phase out import parity pricing in favour of non-discriminatory pricing and the efforts to promote downstream beneficiation. Should the beneficiary not be in compliance with these policies, it shall be expected of the beneficiary to submit with its claims an adopted business plan indicating how it is striving to become compliant.

4. APPROVAL OF THE INCENTIVE APPLICATION AND SUBMISSION OF CLAIMS

- 4.1. The approval set out in the letter of approval is only relevant to the specific business project that applied. A business project, activity or expenditure can only qualify once for an incentive (unless the incentive guidelines state different). A business project will be disqualified if it contravenes this clause.
- 4.2. No representation, communication (including official the **dti** letters), or offer made prior to the approval of the application/claim shall be valid in so far as it does not agree with the letter of approval, or the requirements of the claim.
- 4.3. No information may be submitted with the claim on any, or part of any, project other than the business project that has been approved.
- 4.4. The calculation method of the maximum incentive approved, replaces any calculation method explained in the incentive guidelines and shall be final. The approved maximum amount is fixed and shall not be adjusted due to changes in macroeconomic variables like inflation; exchange; or interest rate etc.
- 4.5. The beneficiary is not automatically entitled to the full amount of the maximum incentive offered. **the dti** further reserves the right to correct any calculation error at any stage before or after approval/payment. A further calculation will be made based on the figures set out in the claim form. This calculation may result in an amount that is less than the maximum amount, but can never be more than the offered maximum amount.

5. AMENDMENTS TO THE INFORMATION SUBMITTED BY THE BUSINESS PROJECT

Any change (including amendment, addition or variation) in the information set out in the application that is relevant to the approved incentives must immediately be communicated to **the dti** in writing. This includes, but is not limited to, changing an approved service provider and changes to time frames.

The beneficiary must request written approval from **the dti** that the planned changes do not affect the incentive in a manner that is unacceptable to **the dti**, before the planned changes take place. The decision to amend the information submitted for the incentive shall be solely in the discretion of **the dti** and is final.

the dti may accept or refuse to make the change applicable to the approval; or may accept the change as part of the approval, but make the approval subject to (additional/other) conditions; or may reject the whole application or claim based on the planned changes. The application or claim shall be rejected where, among others, the beneficiary will no longer qualify for the incentive because of the planned changes.

An approval of an amendment may affect the approved incentive amount.

6. PAYMENT OF THE INCENTIVE

- 6.1. **the dti** or its representative (including independent engineers or other experts) may visit the premises where the business project is conducted/executed/produced/recorded/edited and inspect such business project before it approves an application or claim. **the dti** may do this with or without prior notice.
- 6.2. Such inspection will be, among other things, to verify the information submitted with the application and/or claim and to inspect the premises, financial books, technology, documents, reports and any other information that may pertain to this incentive.
- 6.3. The beneficiary, or its successor in title (including the executor/trustee of a deceased/sequestered/liquidated estate), must keep records (electronic or paper) of all documents relevant to the incentive for five years after it received the last payment. This includes a copy of its application and all its claims; originals of documents submitted with the application and claims; copies of reports or other information provided to **the dti** and relating to the incentive.
- 6.4. The beneficiary must allow **the dti** reasonable access to the records mentioned in paragraph 6.3 above, during normal business hours, and must also provide **the dti** with any information required for the inspection. Should the **Beneficiary** hinder **the dti** or its representative and/or refuse access to such records in any way so that the inspection cannot be effectively completed, **the dti** may summarily reject the application and/or claim.
- 6.5. **the dti** may verify the information contained in the application, claim and/or supporting documents by carrying out an independent investigation. To do such an investigation **the dti** may contact any person who **the dti** feels may be of assistance. If the beneficiary hinders **the dti** or its representative in any way so that the investigation cannot be effectively completed, **the dti** may summarily reject the application and/or claim.
- 6.6. Should **the dti** find that a price claimed by the beneficiary is not market related, **the dti** may, in its sole discretion, and despite the contents of the letter of approval, reduce the approved claim amount to reflect such market-related price, or may reject the full claim.
- 6.7. **the dti** shall only evaluate claim forms that are fully and correctly completed to the satisfaction of **the dti** (including that all the supporting documents required by the incentive guidelines be attached). Approval of a claim is in **the dti**'s sole discretion.
- 6.8. **the dti** shall make payment within 30 calendar days after an approval by **the dti** of the relevant claim in accordance with the requirements and conditions of the incentive scheme's guidelines (which may include a physical inspection). **the dti** may delay payment for an indefinite period, provided that it shall inform the beneficiary of the reasons for such delay so as to ensure that no delay is for unjust administrative reasons.
- 6.9. Payment shall be made directly into the bank account of the beneficiary only. The beneficiary must notify **the dti** of the correct account details in writing when submitting its claim form.
No interest shall be payable by **the dti** on any amounts due and payable. Payment is subject to availability of funds as approved by National Treasury and parliament on a yearly basis, and allocated to **the dti** in terms of the annual Division of Revenue Act.
Where a service provider is involved in terms of the incentive guidelines, **the dti** accepts no liability for non-performance, poor or failed execution of the activity/ies by a service provider or for damages or penalties incurred by the beneficiary for using the services of a service provider.

It is the duty of the beneficiary to inform **the dti** in writing should any of the instances below occur and **the dti** reserves its rights in the event of any of the instances occurring to reject a claim and /or refuse any further payment:

- 6.9.1. The business project stops manufacturing/production/operations for any reason. This includes provisional/final liquidation (or sequestration of the sole proprietor/partner/firm); becoming dormant; being destroyed. It is irrelevant whether this cessation is permanent or temporary (seasonal business projects must at least be operational during the relevant seasons);
- 6.9.2. the beneficiary enters into a compromise offer or arrangement with creditors, or where the beneficiary is placed under judicial management;
- 6.9.3. and where investment is a requirement, the business project reduces the qualifying investment without replacing it again with qualifying investment;
- 6.9.4. the business project reduces jobs and/ or reduces permanent staff or reduces permanent staff in favour of casual, contract or temporary staff;
- 6.9.5. the business project stops complying with the incentive guidelines and/or this schedule.
- 6.10. The beneficiary is required to report to **the dti** in writing within seven days any discrepancy (insufficient / excess) on payments made must repay **the dti** within seven days from such report any excess received.
- 6.11. Any erroneous payment (including those resulting from a miscalculation, mistake or irregularity) will immediately be recoverable and may be deducted from any future payments that are, or will become, payable. **the dti** reserves the right to reverse, apportion or recall any payment or any part thereof at its sole discretion. **the dti** levies interest at the rate prescribed in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) on any outstanding amounts payable as from 30 days of date of demand.

7. MONITORING

- 7.1. The beneficiary must use the incentive amounts received from **the dti** for the approved business project or activities that it described in its application form and an inspector may require evidence at any time after an amount has been received for verification of this requirement. In contravention of this rule, the amount will be recovered from the beneficiary and prescription cannot be pleaded.
- 7.2. **the dti** may ask the beneficiary to complete questionnaires and submit same within the requested period or to report to **the dti** on its business project/activities, as well as on the incentive received for **the dti** to monitor and evaluate compliance as well as the contribution that the incentive is making or has made to the South African economy. If the beneficiary does not comply with the request, **the dti** may, in addition to any other legal remedies that it may have, stop or reduce all further payments in its sole discretion and may refuse any other applications being evaluated at that stage or that may be submitted in future, from the beneficiary or any of its shareholders, directors or principal officers, whether presented directly or indirectly through another legal person for this or any other scheme.
- 7.3. **the dti** may appoint an auditor to perform an audit on the beneficiary to ascertain whether the beneficiary has complied with the incentive guidelines and this schedule. **the dti** will notify the beneficiary in writing of the audit and the **beneficiary** must co-operate with the auditor.

8. NON-COMPLIANCE WITH THE INCENTIVE GUIDELINES OR THIS SCHEDULE

- 8.1. Should the beneficiary not comply with any requirement of the incentive guidelines or this schedule, **the dti** shall be entitled, without prejudice of any other rights that it may have, to reject the application and/or claim; to stop all further payments and/or benefits; and to reclaim any or all of the moneys already paid in its sole discretion. In addition, should the beneficiary be in breach of clause 3.3. *supra* regarding economic policies and commercial statutes, **the dti** reserves the right to implement any of the conditions under clause 10 *infra*.

9. DISPUTES

- 9.1. Any dispute relating to a decision (including the rejection of an application) taken by **the dti** must be resolved by way of one internal appeal only, lodged within such time as is set out in the letter of rejection. No appeals on inspections are allowed. Should the beneficiary dispute the appeal decision, it must proceed by way of review in the High Court of South Africa.
- 9.2. If the beneficiary wishes to place new facts before **the dti** for reconsideration, the beneficiary must explain in writing why these facts could not be provided at the first hearing. If this explanation is, in the sole discretion of **the dti**, unsatisfactory, it may reject the request.
- 9.3. Any other dispute or disagreement between **the dti** and the beneficiary may be submitted in writing, for mediation. If the matter can still not be resolved, it may be referred in writing for arbitration. The decision of the arbitrator shall be final and binding.
- 9.4. Arbitration shall be in accordance with the rules of AFSA (Arbitration Foundation of South Africa) and the arbitration costs shall be shared equally.
- 9.5. A beneficiary has no legal right or any entitlement to any grant irrespective whether a letter of approval has been issued or not as a grant is an act of grace and should a beneficiary or its consultant wish to litigate against **the dti** the law of contract will not apply

10. CRIMINAL, MISLEADING, DISHONEST and UNLAWFUL ACTIVITIES

- 10.1. **the dti** shall, in the case of criminal/misleading/dishonest activities/information, or activities/information that contravenes any Act of the Republic of South Africa, specifically Acts that regulate commercial activities, be entitled to exercise any rights that it may have in terms of common law or statutory law. In addition, the following paragraphs will be applicable:
- 10.2. The beneficiary's application/claim is approved conditional on the correctness and completeness of information provided by the beneficiary in the application/claim/addenda/supporting documents/reports. Should the information be substantially incorrect and/or incomplete, **the dti** may immediately reject the application/claim and claim back all monies already paid.
- 10.3. Where **the dti** suspects criminal/misleading/dishonest activities/information in relation to the beneficiary's incentive application or claim or commercial practices of **the dti** or its consultant **the dti** may immediately suspend any payments that may be due or may become due to the beneficiary
- 10.4. **the dti** may, where the final findings of a forensic investigation, or the findings of a competent authority indicates criminal/misleading/dishonest activities/information or the contravention of an Act, without prejudice to any other rights that it may have, reject an application or any pending claim

and reclaim any payments already made, with *mora* interest, together with the costs of any legal or other costs, which may also include costs of forensic investigators and/or costs of an auditor.

- 10.5. **the dti** may refer financial statements or supporting documents submitted by the beneficiary to SARS for comment and comparison. If SARS informs **the dti** of a difference in financials, **the dti** may without prejudice to any other rights that it may have, reject any pending claim and reclaim any payments already made, with *mora* interest, and refuse any further payment to the beneficiary.
- 10.6. **the dti** shall not be liable for any damages, interest or other claims that may ensue, should incentive payments be delayed, suspended or terminated for whatsoever reason. In addition, the beneficiary's risk of business failure is solely for the beneficiary and no delay, suspension or termination shall render **the dti** liable to the beneficiary or any other related party whatsoever.
- 10.7. Where **the dti** rejected an application or claim due to misrepresentation/discrepancy/abuse/fraud/contravention of an Act by the beneficiary and/or the consultant, **the dti** may reject any current or future application from the beneficiary, its shareholders, directors or principal officers or application from the appointed consultant whether presented directly or indirectly through another legal person. **the dti** shall have the right to immediately refuse any other applications/claims or terminate any contract(s) in existence between **the dti** and the beneficiary, its shareholders, directors or principal officers, whether represented directly or indirectly through another legal person. If it comes to light that any beneficiary, its shareholders, directors or principal officers or application from the appointed consultant whether presented directly or indirectly through another legal person were involved in any misrepresentation/discrepancy/abuse/fraud/contravention of an Act and when a payment has already been received, **the dti** reserves the right to recover the payment(s) and hold the beneficiary, its shareholders, directors or principal officers or application from the appointed consultant all the parties will be held liable serially and jointly the one absolving the other
- 10.8. **the dti** subscribes to the principles set out in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) („PRECCA“), beneficiaries are requested to contact **the dti** fraud hotline on 0800 701 701 should they wish to report any suspicious activities.

NOTE: The date and time when the criminal/misleading/dishonest activities/information or contravention of an Act took place shall be irrelevant. **the dti** will only contribute to businesses that at all times and in all aspects conduct its business in a way that is exemplary and in accordance with the laws of the republic. Failure to notify **the dti** of any record that may indicate the contrary will be seen as aggravating circumstances when **the dti** exercises its discretion in this regard.

11. CONFIDENTIALITY

- 11.1. Both **the dti** and the beneficiary, its employees, members and directors, and agents shall treat all information they gain access to as a result of communications between **the dti** and the beneficiary relating to the incentive (e.g. application/claim/reports), whether on paper or electronic, and which information is not otherwise public knowledge, as confidential.
- 11.2. Confidential information may only be disclosed to any person outside the immediate working environment of **the dti** or the beneficiary with the prior written permission of the other. Any information required by the public sector or its appointees in terms of the reporting duties of **the dti** may be reported by **the dti** without such consent.

- 11.3. Where either **the dti** or the beneficiary receives a court order or a subpoena requiring disclosure of confidential information, it must notify the other in writing within seven days. Where the court order or subpoena gives shorter notice than 20 days, written notice must be given as soon as is reasonably possible. The reason for the written notification is so that **the dti** or the beneficiary may seek a protective order or waive the provision of this clause in writing.
- 11.4. **the dti**/beneficiary must take reasonable care to ensure that only the exact information required by the court order or subpoena, or as is limited by a protective/other order, is disclosed.
- 11.5. This paragraph shall apply even after the relationship between **the dti** and the beneficiary has ceased.
- 11.6. This paragraph does not apply to litigation and/or arbitration proceedings between **the dti** and the beneficiary.

12. CESSION

- 12.1. The approval of an incentive application does not give the beneficiary any right to payment. An approval merely allows the beneficiary to submit a claim form in accordance with the requirements and conditions of the incentive guidelines and this schedule.
- 12.2. Cession of the right to submit a claim is not allowed. The possible right (*spes*) that the claim will be successful and that payment will accordingly follow may only be ceded with the prior written agreement of **the dti** and shall be subject to such strict conditions as **the dti** in its sole discretion will determine.
- 12.3. **the dti** may refuse cession, in its sole discretion, to certain institutions.
- 12.4. Assignment of any of the beneficiary's obligations is not allowed.
- 12.5. No right that the beneficiary might obtain by way of the approval of an incentive may be otherwise encumbered or subjected to any form of pledge or used as the basis for any form of security or guarantee to bind the state whatsoever.
- 12.6. **the dti** may cede or assign any of its rights or obligations in accordance with a decision from National Treasury, Parliament or Cabinet. This decision will include any decision that causes a policy shift within **the dti** so that in order to align itself with the shift in policy, **the dti** has to so cede or assign. **the dti** will take reasonable steps to ensure that the beneficiary is not unreasonably prejudiced by such assignment or cession.

13. GENERAL

- 13.1. No waiver, indulgence and/or relaxation of whatever nature of any of the provisions of the guidelines or this schedule by **the dti** shall be valid or enforceable against **the dti**, unless such waiver, indulgence or relaxation is in writing and signed by **the dti**.
- 13.2. The guidelines, the completed application form (with attachments), this schedule and the claim form(s) (with attachments) are the only documents that set out the requirements and conditions applicable to the relationship between **the dti** and the beneficiary as well as the information on which the relationship is based. Amendments to the guidelines and this schedule may be made by **the dti** in accordance with this schedule.

- 13.4. The beneficiary agrees that the laws of South Africa, excluding the law of conflicts (which determines the legal system applicable to a dispute), shall govern the relationship between **the dti** and the beneficiary.
- 13.5. The beneficiary, consultant and auditor are required to sign this schedule where it appears in the application form and claim form to confirm that the beneficiary has read the content hereof and knows that it forms part of the requirements of the incentive scheme and that the beneficiary is in compliance with same and it is binding on the beneficiary.